

[Cite as *McCully v. Dept. of Transp., Dist. 4, 2007-Ohio-4502.*]

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

---

SUSAN MCCULLY

Plaintiff

v.

DEPT. OF TRANSPORTATION,  
DISTRICT 4

Defendant

Case No. 2007-03323-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) On February 20, 2007, plaintiff, Susan McCully, stated she, “was traveling east on Rt. 62 towards Harrisburg Rd.,” when her automobile struck a pothole causing tire and wheel damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$471.53, the total cost of automotive repair she incurred resulting from the February 20, 2007, described incident. Plaintiff implied her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The filing fee was paid.

{¶3} 3) Defendant denied any liability in this matter based on the contention that no DOT personnel had any knowledge of the pothole plaintiff’s vehicle struck prior to the February 20, 2007, incident described by plaintiff.

{¶4} 4) Plaintiff did not produce any evidence to establish the length of time the particular damage-causing pothole existed prior to her property damage event.

## CONCLUSIONS OF LAW

{¶5} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶6} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶7} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole. Additionally, the trier of fact is precluded from making an inference of defendant’s constructive notice, unless evidence is presented in respect to the time the pothole appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication

Case No. 2007-03323-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

defendant had constructive notice of the pothole. Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

---

SUSAN MCCULLY

Plaintiff

v.

DEPT. OF TRANSPORTATION,  
DISTRICT 4

Defendant

Case No. 2007-03323-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE  
DETERMINATION

---

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

---

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Susan McCully  
7484 Market Avenue N.  
Canton, Ohio 44721

James G. Beasley, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
6/25  
Filed 7/6/07  
Sent to S.C. reporter 8/31/07